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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Sections 3(n) and 332 of  
the Communications Act

Regulatory Treatment of Mobile Services

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GN Docket No. 93-252

COMMENTS OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

INTRODUCTION

The National Telephone Cooperative Association ("NTCA") submits these Comments to the Notice of Proposed Rulemaking, FCC 93-454, released on October 8, 1993 ("Notice").

NTCA is a national association of approximately 500 small local exchange carriers ("LECs") providing telecommunications services to interexchange carriers and subscribers throughout rural America. Its members are located in sparsely populated rural areas in forty-six states and have a proven record of providing state of the art communications services to the communities where they are located. NTCA members are interested in providing new and emerging technologies to the rural communities they serve. Many members provide cellular and other mobile services which will be impacted by the new definitions and rules.

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The Budget Reconciliation Act of 1993 ("Act") amended Sections 3(n) and 332 of the 1934 Communications Act to change the way existing and future mobile services are regulated. The Act requires that the Commission prescribe regulations to implement Section 332 by February 6, 1994, as it affects Personal Communications Services (PCS). The Commission has a year to decide non-PCS regulatory issues. However, in its Notice, it addresses issues it is required to decide by February 6, 1994, as well as non-PCS issues because it believes PCS issues and other mobile service issues are interdependent. It asks for comments on non-PCS issues but states that it reserves the right to defer resolution of non-PCS issues. NTCA's comments are directed at PCS issues as well as concerns that the Commission establish a level playing field for the new PCS entrants. These new entrants will begin to provide service under a regime in which they will be competing against services that may have been previously advantaged by being classified as private carriers and regulated in a manner that imposed less stringent requirements on them than could be imposed on new entrants.

#### DISCUSSION

I. THE COMMISSION SHOULD PRESCRIBE RULES THAT ASSURE REGULATORY PARITY FOR SUBSTITUTABLE SERVICES.

Congress has given the Commission the authority it needs to assure that mobile services provided under the new competitive regime that is rapidly evolving will be regulated in a manner that places all providers on an equal footing. Under new Section 332 of the Communications Act, services that were formerly

regulated as "private mobile services" will now require reclassification if they are "functionally equivalent" to commercial mobile services or satisfy the definition of commercial mobile services. Under the definition, a mobile service will be classified as a "commercial service" if it (1), is "provided for profit," and (2), makes "interconnected service" available "to the public" or "to such classes of eligible users as to be effectively available to a substantial portion of the public." Interconnected service is "service that is interconnected with the public switched network" or service for which an interconnection request is pending. Notice at ¶ 10.

NTCA urges the Commission to take measures to assure that cellular, specialized mobile radio services ("SMRS"), and PCS providers are treated fairly in the application of the new definitions. Evenhanded application of the definitions and rules affecting this class of services will be important since these services are most likely to compete directly with each other and since the Commission's rules and proposed forbearance policy are based on this assumption. The Commission should not be in the business of picking winners and losers. This would only lead to distorted policies which would ultimately have to be corrected after mistakes are made. The public stands to benefit by an even-handed policy that allows for regulatory parity among licensees competing for the same customer. In view of the fact that previously defined private services like SMR have already had the advantage of relaxed regulation, it will be important

that the Commission schedules the application of future regulations to avoid favoring one class of services against the other.

II. NTCA AGREES WITH THE FCC PROPOSAL TO ALLOW PCS LICENSEES TO CHOOSE WHETHER TO PROVIDE COMMERCIAL MOBILE OR PRIVATE MOBILE SERVICE REGARDLESS OF FREQUENCY USE.

In light of the evolving nature of PCS and its potential for a variety of applications, the Commission has wisely proposed to allow PCS licensees to choose whether to provide commercial mobile or private mobile service regardless of frequency use. NTCA supports this approach but urges the Commission to adopt measures to assure that regulatory parity is maintained in the application of this approach. Thus, it may be necessary for the Commission to adopt measures to assure that providers have the ability to change the nature of the service they provide on the spectrum and that the Commission has the ability to impose common carrier regulations on providers whose services evolve as common carriage. Since carriers will bid on the spectrum and be required to pay for it, they should have the flexibility to change the uses to which it is put.

In this regard, NTCA member telephone cooperatives have traditionally accepted common carrier regulation even though by charter and state law they operate on a non-profit basis. It is not clear how the revised Act distinguishes between common and private carriage and how commercial and private are intended to

interrelate.<sup>1</sup> As a practical matter, services such as cellular and PCS in the future will often be offered through a for-profit affiliate. Where offered directly, however, the service will meet the "non-profit" definition.

III. NTCA AGREES THAT TITLE II FORBEARANCE SHOULD APPLY TO COMMERCIAL MOBILE SERVICES.

NTCA agrees with the Commission's tentative view that the level of competition in the commercial mobile services marketplace will be sufficient to permit forbearance from regulation of the rates commercial mobile services providers charge end users. Section 332 gives the Commission explicit authority to forbear from imposing Title II regulation (other than Sections 201, 202, and 208) on commercial mobile services if it determines (a) that enforcement of Title II provisions are not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with a service are just and reasonable and are not unjustly or unreasonably discriminatory, (b) is not necessary for the protection of consumers, and (c) is consistent with the public interest. Notice at ¶ 57. With respect to PCS services in particular, NTCA believes that forbearance of most Title II provisions will foster the rapid deployment of the services and minimize regulatory barriers for new entrants and small firms.

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<sup>1</sup> It is also not clear how the "for profit" requirement in Section 332 affects the Section 309(j)(2)(A) definition of licenses subject to competitive bidding. Among other things such licenses must involve "the licensee receiving compensation from subscribers. . . ."

The Commission will have the opportunity to impose regulation if conditions in the marketplace later reveal a need for regulation. Moreover, the Commission will not forbear from enforcing against all commercial mobile service providers, Sections 206, 208, 209, 216, and 217. Notice at ¶ 67. In view of this minimal regulation, NTCA believes that at the outset of the introduction of the new services, the public interest will benefit from a policy which frees new entrants from burdensome rate regulation, tariff filing, reporting and accounting requirements. In view of the Commission's announced policy favoring the aggregation of licenses,<sup>2</sup> regulatory relief will be especially crucial for rural telephone companies and other designated entities for whom the Commission in Section 309(j) of the Communications Act is mandated to ensure the opportunity to provide wireless services offered on auctioned spectrum.

With respect to the Commission's intent to forbear from imposing Title II regulations on private carriers that will be reclassified as commercial mobile services carriers, NTCA urges the same treatment for these carriers as for new carriers classified as commercial mobile service providers. As the Commission recognizes, PCS providers will be subject to substantial competition from reclassified carriers such as specialized mobile radio as well as other private carriers.

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<sup>2</sup> See, Notice of Proposed Rulemaking, In the Matter of Implementation of Section 309(j) of the Communications Act, Competitive Bidding, PP Docket No. 93-253. ¶ 52-57, (released October 12, 1993).

Notice at ¶ 62. NTCA also agrees that the Commission should not apply rate regulation to commercial mobile services, including PCS.

The Commission asks for comments on forbearance of newer provisions of the Act, Sections 223 (Obscene or Harassing Calls), 225 (TRS services), 226 (autodialers, telemarketers) and 228 (pay-per call-services). NTCA recommends that the Commission forbear from imposing the obligations in these provisions on PCS providers until it has more information on the technical feasibility of compliance with these provisions. NTCA believes a more informed decision can be made after the industry has some experience with the technology and arrangements for interconnection between mobile service providers and wireline service providers.

The Commission tentatively concludes that intrastate and interstate interconnection are inseverable. It therefore will preempt state regulation of LEC provision of interconnection for commercial mobile services, including PCS. NTCA agrees that preemption is appropriate but takes no position on the issue of interconnection rate regulation.

CONCLUSION

NTCA requests that the Commission enact rules consistent with these comments.

Respectfully submitted,

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November 8, 1993



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Docket No. 93-252 was served on this 8th day of November 1993, by  
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